

## FUTURE OF INDIAN DEMOCRACY\*

Hon'ble Mr. Justice Deepak Verma\*\*

We all know that India is the world's largest democracy. Hence, before speaking on the future of democracy in India, it is essential to understand the reason behind adoption of such a system in the first place. A google search lists more than fifty forms of governments. Out of all these, why did we prefer democracy? Was it merely because it was followed by our erstwhile rulers, the British, and hence, we were compelled to follow suit? Though this proposition is partially true, this was not the chief reason.

We, as a nation, achieved freedom after great struggle, after lot of blood shed and sacrifices. The leaders of that time wanted to ensure that such hard-earned freedom is not misused and hence, rightly thrust the administration of the country in the hands of its people, who would manage the same through their elected representatives. This is what is meant by democracy. The literary meaning of the word democracy is a government in which the supreme power is vested in the people and exercised by them or by their elected representatives under a free electoral system.

Justice Dr. M. Rama Jois has recently compiled a booklet titled *Message from Parliament House* containing Sanskrit verses inscribed at various places in the Parliament House. One such verse taken from *Kautilya's Arthashastra* clearly indicates that in ancient times, though in form a Government was headed by a King (*Rajatva*), in substance it was democracy (*Prajaprabhutva*). The verse is as follows:

*प्रजासुखे सुखं राज्ञः प्रजानां च हिते हितम्  
नात्मप्रियं हितम् राज्ञः प्रजानां तु प्रियं हितम्*

This verse means that: 'In the happiness of the subjects lays the King's happiness, in their welfare; what pleases himself the king shall not consider good but whatever pleasure his subjects the King shall consider good.'

However, democracy was given a modern look by the erstwhile Indian Nationalist Congress when Pt. Jawaharlal Nehru said, in January 1938, that the National Congress stood for independence and a democratic state. This was how democracy found roots in independent India. Nehruji proposed this form of government as he believed that an Assembly elected on the basis of adult franchise would represent the people as a whole and would be far more interested in the economic and social problems of the masses. Thus, the Constitution of India was born with the Preamble clearly stating that it is the people of Indian who are giving to themselves this Constitution. What better proof is needed to show the love of our Constitution towards democracy than

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the opening lines of the Preamble... “We, the People of India”?

The democratic republic pattern of India implies that there is to be no monarchical system of government in the country as it is a republic with an elected President as the Head of the State instead of the British Sovereign. The specific adoption of democratic form of government in the Constitution clearly shows the dislike of the Constitution-makers towards monarchy as they were well-aware of the ill-effects associated with it.

However, a quick travel through the history of Indian politics post-independence reveals a rich tradition of famous political families. The trend of ‘dynastic politics’ has only escalated in recent years. Are we trying to establish a form of government that the founding fathers specifically did not intend to? This is a delicate question to be answered in order to determine the future of democracy in our country.

What is more disheartening is the fact that democracy is being eroded even in the judiciary, which has always enjoyed a clean and good reputation in our Country. The piling up of cases in various courts across the Country is a classic example of injustice being meted out to the citizens by the judiciary. It is being time and again emphasized in various forums that speedy trial is a fundamental right implicit in the broad sweep and content of Article 21 of the Constitution. However, this has not helped in drastically bringing down the number of pending cases. The major reason being attributed to this debacle is the poor judge-population ratio. In this regard, it was held in the famous case of *SC Advocates-on-Record Association v. Union of India*<sup>1</sup> that it is a mandatory duty of the President of India, in whom the power to appoint judges is vested by Article 216, to appoint the proper number of judges which is required to discharge the obligation to ensure speedy justice. This implies that even though the Court itself cannot fix the number to be appointed, it may direct the President to make a periodical review of the judge-strength of a High Court and to provide proper number of judge in accordance with the recommendations of the Chief Justice of India. Hence, it is the bounden duty of the court and the prosecution to prevent unreasonable delay in order to uphold the true spirit of democracy.

Here, I would like to give you one example. When a convict is undergoing a sentence while his appeal is still pending in the Higher Court and for some reason, he is not released on bail. Obviously his appeal cannot be heard immediately as there may be appeals pending much prior thereto. After final hearing of matter, if ultimately, the convict is acquitted but by that time he has already undergone the sentence awarded to him by the trial court or has partially undergone the same. Then, who is responsible for the period that he has unwarrantedly undergone in the jail. Whether Government is ready to pay compensation to such convicts, it is not being done. In a democratic set up, what is required is a quick justice especially in those cases where convict is in jail. In this regard, the judge population ratio is required to be achieved

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1. (1993) 4 SCC 441.

or enhanced. But the question is, merely increase in the number of judges may not bring the fruitful result as we need dedicated, committed and working judges and that can be achieved only if you decide to join the profession in larger number.

While the Supreme Court has held in the case of *Kuldip Nayyar v. Union of India*<sup>2</sup> that the edifice of democracy in our country rests on a system of free and fair elections, it really makes me ponder if we actually belong to a democratic society! In fact, in a recent interview, former Chief Election Commissioner, J. M. Lyngdoh, has aptly said that what we presently have in India is Universal Adult Franchise and not real democracy. He was speaking in the context of empowering the Election Commission to enforce its authority to ensure that internal democracy was really implemented in political parties through genuine organizational elections.

A democratic political system should provide adequate opportunities for the people to discuss political issues and express their will on them. Press, public meeting and the Parliament are the institutions to express public opinion.

In my opinion, this right is being grossly misused by the media, popularly known as the 'Fourth Estate'. Yes, I am talking about 'Trial by Media'. As you all are aware, it is a phrase popularly used to describe the impact of television and newspaper coverage on a person's reputation by creating a widespread perception of guilt or innocence before, or after, a verdict in a court of law. Especially, in India, trial by media has assumed significant proportions as of late, media has been acting as a court and passing judgments even before the court has pronounced its verdict.

Take the recent example of conviction of Maria Susairaj. The Court had heard both sides, scrutinized all the evidence placed before it and consequently, sentenced her to three years' imprisonment for concealing evidence in a murder case. However, the media is crazily demanding stronger punishment for her without understanding that there is right of appeal. This, clearly, is an interference with the judicial process. The media cannot and should not be an investigator, and cannot be permitted to reach its on conclusion, even before completion of trial. Why doesn't media let the law take its own course-this is something which I have failed to understand!

A Government is not democratic simply because it is voted into power by the majority. It is not democratic where it is required to vote only for one party. The test is whether it gives democratic rights to its subjects, if it allows freedom of thought, speech and association to its opponents. If a party brooks no rivals outside it and no dissensions within it, even if it is voted by the electorate, it is undemocratic.

Mahatma Gandhi, in his newspaper *Harijan*, wrote on democracy that: "Evolution of democracy is not possible if we are not prepared to hear the

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2. (2006) 7 SCC 1.

other side. We shut the door of reason when we refuse to listen to our opponents or, having listened, make fun of them. If tolerance becomes a habit, we do not run the risk of missing the truth.”

Social and economic democracy is the foundation on which political democracy would be a way of life in the Indian polity. We must not be content with mere political democracy. We must endeavour to transform it into social democracy. Social democracy means a way of life based on the principles of liberty, equality and fraternity. In an ideal social democracy, they should never be treated as separate items of a trinity.

In the context of social democracy, I am reminded of an alarming article in the newspaper which I happened to read very recently it stated that India accounts for 58% of those who practice open defecation across the globe. On this ignominious list, Indonesia is a distant second, followed by China. While this is in respect of the poor sanitation facilities, I have got the opportunity of studying the problem of hunger in our country from a close perspective as I was one of the judges hearing the writ petition in the matter of *PUCL v. Union of India*<sup>3</sup>, popularly known as the *Right to Food* case. Though I am not supposed to reveal much on this as the matter is sub-judice, the Bench has held in one of its orders that shortage of funds cannot excuse the failure of the state to fulfil its constitutional obligations. It has been consistently held by the courts in India.

Another facet of social democracy is women empowerment. Though the position of urban women has increased tremendously in the last few decades, the same cannot be said about their rural counterparts. Female foeticide is still prevalent in various parts of the country. In fact, according to the latest census in India, this year has recorded the lowest ever child sex ratio of 914 females to every 1000 males-the number in 1971 was 940.

Only few days back, I was shocked and surprised to read an article in *Hindu* that in India, only one bed in the hospital is available for thousand patients. Where the other 999 patients would go is anybody's guess. Is this what is required in a democratic set up? Whether it is not the mandate of the Constitution to provide good health to its citizens. We have to think and work on these issues in greater details so as to mitigate the problems of poor and down-trodden.

I put a question to myself as to why do we require a quality and good education in law. For this also, I will give you one instance which proved the poor quality of education in law that used to be imparted earlier and now.

I was ashamed to go through a news item which depicted the poor standards of legal education and consequently poor advocacy in our country. For direct appointments as District and Sessions Judges in Karnataka, an advertisement was issued by the High Court to fill up certain vacancies. In all, 518 candidates appeared in the written test and *viva voce*. But only one of

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3. 1995 SCC Supl(2) 572.

them was declared successful. This only reflects as to how poorly the students must have been taught the law subjects and their extremely below standard knowledge of law and advocacy. In addition to this, I must also tell you that these candidates had already practiced for more than 7 years. I agree that competition must have been tough but not as tough that result would almost be 0%. What are we supposed to do in these circumstances? Unless there is an overall improvement in the education pattern and procedure for enrolment as an advocate, things will not improve.

Same thing was repeated in the State of Madhya Pradesh to fill up the posts of District Judges in Madhya Pradesh where pursuant to an advertisement, several advocates applied for the same. But once again, shockingly not even one was able to qualify the written test and thus was not called for *viva-voce*.

It is these instances which go to prove that quality education is a must. Then, you can very well appreciate the plight of judges if such advocates argue the matters before us. You can well imagine the assistance which they may be able to provide. The question then arises as to who is to be blamed. I leave it to be answered by all of you but request to work it out so as to have overall improvement in this regard.

I would also like to quote here the remarkable words of Dr. B. R. Ambedkar, the architect of our Constitution, extracted from a speech delivered by him at the Constituent Assembly on 25 November 1949: "On 26 January 1950, India will be independent country. What will happen to her independence? Will she maintain her independence or will she lose it again? This is the first thought that comes to my mind. It is not that India was never an independent country. The point is that she once lost the independence which she had. Will she lose it the second time? It is this thought that makes me most anxious for the future. What perturbs me greatly is the fact that not only India has once before lost her independence, but lost it by the infidelity and treachery of some of her own people. It was Jaichand who invited Mahommed Ghori to invade India. When Shivaji was fighting for the liberation of Hindus, the other Maratha noblemen and the Rajput kings were fighting battles on the side of Mughal Emperors."

This speech was delivered soon after India became independent, that is to say, more than sixty years ago. But its essence is still as fresh as a newly bloomed flower. Dr. Ambedkar foresaw in his sagacity that lack of discipline and restraint would lead the country to chaos and disorder. So, will history repeat itself in the form of political leaders massacring the concept of democracy in India-only time can answer this question because in real democracy, people learn not from books, nor from Government who are in name and in reality their servants. Hard experience is the most efficient teacher in democracy.

Ideally speaking, India being one of the biggest countries, has to show a path to the world about the true form of democracy in actual practice. The



persons visiting India from other countries may find much diversity and get the impression that India instead of being a single nation seems an aggregate of nations, each one of which is different from the other in terms of climate, food habits, languages, *etc.*

Now, if we wish to maintain democracy, not merely in form but also in fact, what are we supposed to do? We must observe the caution which J. S. Mill has given to all those who are interested in the maintenance of democracy, namely, not to lay our liberties at the feet of even a great man, or to trust him with powers which enable him to subvert their institutions.

The Irish patriot Daniel O'Connell also means the same when he says: "No woman can be grateful at the cost of her chastity and no nation can be grateful at the cost of its liberty."

Fortunately, the maxim 'king can do no wrong' has never found application in India. This has enabled the citizens to proceed against the state whenever fundamental rights are infringed or a tort is committed by it. The case of *State of Rajasthan v. Vidyawati*<sup>4</sup> is a classic example in which the State was directed to pay compensation to a wrong committed by it in exercise of a sovereign function.

It was held by the Supreme Court in the case of *S. R. Chaudhari v. State of Punjab*<sup>5</sup> that parliamentary democracy generally envisages -

- Representation of the People;
- Responsible Government;
- Accountability of the Council of Ministers to the Legislature.

The essence of this is to draw a direct line of authority from the people through the Legislature to the Executive. To safeguard democracy, people must have a keen sense of independence, self-respect and oneness and should insist on choosing as their representatives only such persons as are good and true. People should vote to only those candidates whom they believe would deliver their promises on time. Voting should be devoid of considerations based on identity of the candidates.

I would request the younger generation, to come forward to safeguard the spirit of democracy in our country. It is not necessary that one should enter politics in order to fulfil this obligation. As future lawyers, it is more than enough if you all act as alert citizens as democracy cannot be worked by merely twenty men sitting at the Centre. It has to be worked from below, by you and me, by all of us. What is really needed to make democracy function is not knowledge off acts, but right education. Be aware of your rights and endeavour to enlighten others also about theirs.

Dr. S. Radhakrishnan in his special article, *Democracy as a Way of Life*,

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4. AIR 1962 SC 933.

5. (1997) 115 PLR 531.

has said that: “Democracy gives us a vision, a way of life, asks us to accept certain ideals, norms or standard of behavior.”

I sincerely hope that we live upto the expectations of the great men of our land who have given us a free nation and a wonderful treasure in the form of a document called *the Constitution of India*.

